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**SUBSTITUTE HOUSE BILL 1655**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** House Innovation, Technology & Economic Development (originally sponsored by Representatives Hudgins, Shea, Morris, Kloba, and Valdez)

AN ACT Relating to establishing guidelines for government procurement and use of automated decision systems in order to protect consumers, improve transparency, and create more market predictability; adding a new section to chapter 49.60 RCW; and adding a new chapter to Title 43 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  The legislature finds that Washington is a technology leader on a national and global level and holds a distinctive position in creating frameworks around technology that enhance innovation while protecting consumers and promoting fairness, accountability, and transparency for all Washingtonians.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Algorithm" means a computerized procedure consisting of a set of steps used to accomplish a determined task.

(2) "Algorithmic impact inventory" means the report with content enumerated in section 3 of this act.

(3) "Automated decision system" means any algorithm, including one incorporating machine learning or other artificial intelligence techniques, that uses data-based analytics to make or support government decisions, judgments, or conclusions.

(4) "Automated final decision system" means an automated decision system that makes final decisions, judgments, or conclusions without human intervention.

(5) "Automated support decision system" means an automated decision system that provides information to inform the final decision, judgment, or conclusion of a human decision maker.

NEW SECTION. **Sec.**  (1) The office of the chief information officer shall conduct a review and make an inventory of all automated decision systems that are being used, developed, or procured by state agencies. By December 1, 2020, the office of the chief information officer shall provide to the legislature an algorithmic impact inventory report that includes clear and understandable statements of the following for each automated decision system:

(a) The automated decision system's name, vendor, and version;

(b) A description of the automated decision system's general capabilities, including reasonably foreseeable capabilities outside the scope of the agency's proposed use and whether the automated decision system is used or may be used to deploy or trigger any weapon;

(c) The type or types of data inputs that the technology uses; how that data is generated, collected, and processed; and the type or types of data the automated decision system is reasonably likely to generate;

(d) Whether the automated decision system has been tested by an independent third party, has a known bias, or is untested for bias;

(e) A description of the purpose and proposed use of the automated decision system, including: What decision or decisions it will be used to make or support; whether it is an automated final decision system or automated support decision system; and its intended benefits, including any data or research demonstrating those benefits;

(f) Whether the automated decision system makes decisions affecting the constitutional or legal rights, duties, or privileges of any Washington resident;

(g) Whether the automated decision system gives notice to an individual impacted by the automated decision system of the fact that the automated decision system is in use and provides the following information:

(i) The automated decision system's name, vendor, and version;

(ii) What decision or decisions it will be used to make or support;

(iii) Whether it is an automated final decision system or automated support decision system;

(iv) What policies and guidelines apply to its deployment;

(v) Whether a human verifies or confirms decisions made by the automated decision system; and

(vi) How an individual can contest any decision made involving the automated decision system;

(h) Whether the automated decision system ensures that the agency can explain the basis for its decision to any impacted individual in terms understandable to a layperson including, without limitation, by requiring the vendor to create such an explanation;

(i) Whether the automated decision system is subject to appeal, immediate suspension if a legal right, duty, or privilege is impacted by the decision, and potential reversal by a human decision maker through a timely process clearly described and accessible to an individual impacted by the decision;

(j) A description of any potential impacts of the automated decision system on civil rights and liberties and potential disparate impacts on marginalized communities, and a mitigation plan;

(k) A clear use and data management policy, including protocols for the following:

(i) How and when the automated decision system will be deployed or used and by whom, including but not limited to: The factors that will be used to determine where, when, and how the technology is deployed; and other relevant information, such as whether the technology will be operated continuously or used only under specific circumstances. If the automated decision system will be operated or used by another entity on the agency's behalf, the algorithmic accountability report must explicitly include a description of the other entity's access and any applicable protocols; and

(ii) How automated decision system data will be securely stored and accessed, and whether an agency intends to share access to the automated decision system or the data from that automated decision system with any other entity, and why; and

(l) A description of the fiscal impact of the automated decision system, including: Initial acquisition costs; ongoing operating costs such as maintenance, licensing, personnel, legal compliance, use auditing, data retention, and security costs; any cost savings that would be achieved through the use of the technology; and any current or potential sources of funding, including any subsidies or free products being offered by vendors or governmental entities.

(2) The office of the chief information officer shall report to the legislature annually on the progress of the review and inventory process in subsection (1) of this section until the inventory is completed.

NEW SECTION. **Sec.**  By January 1, 2021, the chief privacy officer appointed in RCW 43.105.369 shall adopt rules pursuant to chapter 34.05 RCW regarding the development, procurement, and use of automated decision systems by state agencies. These rules apply to automated decision systems inventoried in section 3 of this act and must address any issues of bias identified in the algorithmic impact inventory.

NEW SECTION. **Sec.**  A new section is added to chapter 49.60 RCW to read as follows:

(1) It is an unfair practice for any automated decision system to discriminate against an individual, or to treat an individual less favorably than another, in whole or in part, on the basis of one or more factors enumerated in RCW 49.60.010.

(2) For the purposes of this section, "automated decision system" has the same meaning as defined in section 2 of this act.

NEW SECTION. **Sec.**  Sections 1 through 4 of this act constitute a new chapter in Title 43 RCW.

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